(2)

No. 90-927

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

COUNTY OF LOS ANGELES,

Petitioner,

vs.

DANIEL E. BRATT;
FRANK COOKE; RAY MARIN;
ISHMAEL S. MORAN, JR.;
BILLY W. PUGH;
RUSSELL TURNER;
JAMES BLAYDES; TYRONE ALLAIN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALEXANDER B. CVITAN
REICH, ADELL & CROST
A Professional Law Corporation
501 Shatto Place, Suite 100
Los Angeles, California 90020
(213) 386-3860

Attorneys for Respondents

Lorraine Mitchell-Legal Briefs

732 S. WASHINGTON BOULEVARD
LOS ANGELES, CALIFORNIA 90021
TELEPHONE (213) 747-6501

QUESTIONS PRESENTED

1. Whether Garcia v. San Antonio Metropolitan Transit District, 469 U.S. 528 (1985), should be overruled so that the courts may return to the unworkable and unsound traditional governmental function test to determine the extent of permissible federal regulation over the states under the Commerce Clause.

2. Whether Garcia should be limited to public transit workers and rendered inapplicable to other public employees.

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INTRODUCTION

Respondents Daniel E. Bratt; Frank Cooke; Ray Marin; Ishmael S. Moran, Jr.; Billy W. Pugh; Russell Turner; James Blaydes; and Tyrone Allain oppose the

granting of the petition for writ of certiorari filed by the County of Los Angeles ("County").

STATEMENT OF THE CASE

After this Court's decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), and Congressional enactment of the Fair Labor Standards Act Amendments of 1985, Pub. L. 99-150, the County undertook the task of determining the exempt and non-exempt status of its employees under the Fair Labor Standards Act ("FLSA"). The County determined that thousands of its employees were covered by the FLSA's overtime pay requirement. Since 1986 the County's policy has been to pay FLSA-mandated overtime wages to all

employees whom it determined to be non-exempt.

Pursuant to this policy, the County has applied the FLSA to hundreds of employees in the Deputy Probation Officer I and Children's Treatment Counselor I classifications. Because respondents Bratt, Cooke, Marin, Moran, Pugh and Turner are Deputy Probation Officers IIs, however, the County considered them to be within the administrative exemption to the FLSA, see 29 U.S.C. § 213, and has refused to pay FLSA overtime wages to them. Similarly, because respondent Blaydes is a Children's Treatment Counselor III, and respondent Allain is a Children's Treatment Counselor II, the County considered them to be within the administrative exemption (and in Blaydes'

case, also within the executive exemption), and has not paid FLSA overtime wages to them. The eight respondents sued the County to recover their overtime pay pursuant to 29 U.S.C. § 216(b).

At the District Court, the parties introduced evidence of respondents' job duties. This Court's decision in Cabell v. Chavez-Salido, 454 U.S. 432 (1982), cited by the County in its Petition, did not involve the eight respondents here, nor did that case describe respondents' specific job duties. Based on the evidence introduced at trial, the District Court rejected the County's contention that the respondents are exempt under the administrative and/or executive exemptions contained in 29 U.S.C. § 213. The District Court also rejected the County's argument that the Tenth Amendment

precludes application of the FLSA to the respondents, citing this Court's decision in Garcia. The United States Court of Appeals agreed with the District Court.

The County of Los Angeles now asks this Court to revisit and reverse its decision rendered only five years ago in Garcia. Alternatively, the County argues that if the Court does not reverse Garcia, that case should be limited to its facts and govern overtime pay to transit workers and no others.

REASONS FOR DENYING THE WRIT

The County incorrectly states that the Court of Appeals "decided an important question of federal constitutional law which should be settled by the United States Supreme Court [Petition at 5]."

The Court of Appeals did not resolve a question of federal constitutional law, other than to adhere to this Court's holding in Garcia.

In response to the County's argument that probation and child protection activities are traditional governmental functions and therefore beyond the federal commerce power to regulate, the Court of Appeals held:

> "The County recognizes that National League of Cities was overruled in Garcia, but nevertheless argues that Garcia should apply only to activities such as city mass transit systems, not to the County's services at issue here.
>
> "The County's attempt to resurrect the test in National League of Cities is without merit. The Court in Garcia specifically "reject[ed], as unsound in principle and unworkable in practice, a rule of state

> immunity from federal regulation that turns on a judicial appraisal of whether a particular governmental function is 'integral' or 'traditional.'" 469 U.S. at 546-47. Thus, any attempt to distinguish the decision in Garcia from the present case on the grounds that the County's probation and child protection services are more traditional government functions than mass transit service is unavailing."

Bratt v. County of Los Angeles, 912 F.2d 1066, 1068 (9th Cir. 1990).

In Garcia, having rejected the traditional governmental function test as a means to determine state immunity, this Court analyzed the sovereignty of states in the context of the constitutional scheme governing the relationship between the states and the federal government. Garcia, 469 U.S. at 550-51. The Court concluded that the fundamental limitation

that the constitutional scheme imposes on the Commerce Clause is the political process inherent in the structure of the federal system. Id., 469 U.S. at 552-54.

The County urges for this Court to reinstate the traditional governmental function test contained in National League of Cities v. Usery, 426 U.S. 833 (1976). However, the County does not explain why this test would be any less unworkable in practice or incompatible with principles of federalism than it was during the years between National League of Cities and Garcia. See Garcia, 469 U.S. at 538-39.

The County next argues that even if Garcia remains the law of the land, the political process which this Court viewed as the means of protection for states against intrusive federal regulation has

failed to protect state sovereignty in this case. The County offers no clue as to how the political process failed, except to argue that the FLSA intrudes into the operation of local government and abrogates its ability of delivering "traditional government services" [Petition at 7]. Thus, the County's claim of a failure of the political process is based wholly on the very test rejected in Garcia and for which the County cannot articulate a basis for reconsideration.

In any event, contrary to the County's description, the FLSA does not intrude upon the nature or extent of governmental operations or services. It simply requires the payment of prescribed wages for certain hours worked. The County has applied the FLSA to thousands

of employees since 1986, and there is no evidence that this has had an adverse impact on its ability to operate and provide necessary services to the public.

The enactment of the Fair Labor Standards Act Amendments of 1985, P.L. 99-150, demonstrates the utilization of the political process described in Garcia. After this Court decided Garcia, state and local governments lobbied Congress for relief from the newly announced obligations under the FLSA. As a result of complaints over retroactive liability and financial unpreparedness, Congress passed Section 2(c) of the Amendments which provided that state and local governments would not be liable for overtime violations of the FLSA until April 15, 1986. Other sections of the Amendments also reflect state and local

governments' use of the political process to obtain relief from federal regulation. For example, Section 2(b) of Pub. L. 99-150 provides for the continued viability of collective bargaining agreements which permit compensatory time off in lieu of overtime compensation, "except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(o) of the Fair Labor Standards Act of 1938 (as added by subsection (a))." By adding section 7(o), Congress permitted state and local governments to use compensatory time off under certain circumstances.

The political process does not fail simply because Congress imposes obligations upon state and local governments with which the County does not agree. If

this were the case, no consistent scheme of federal regulation would be possible.

CONCLUSION

This case presents an issue of federal regulation under the Commerce Clause decided five years ago by this Court in Garcia. The County advances no reason why the Court's holding in Garcia should be reconsidered or limited to its facts. For these reasons, certiorari should be denied.

Respectfully submitted,

Alexander B. Cvitan
REICH, ADELL & CROST
A Professional Law Corporation
501 Shatto Place, Suite 100
Los Angeles, California 90020
(213) 386-3860
Attorneys for Respondents